



**NEVADA COMMISSION ON ETHICS
EXECUTIVE DIRECTOR'S REPORT AND RECOMMENDATION
REGARDING JUST AND SUFFICIENT CAUSE**

REQUESTS FOR OPINION NOS.
06 - 61, 06 - 62, 06 - 66, 06 - 68

SUBJECT: MICHAEL CARRIGAN
COUNCIL MEMBER
CITY OF SPARKS

A. JURISDICTION:

In his capacity as City of Sparks council member, Michael Carrigan is a public officer as defined by NRS 281.4365. As such, the Nevada Commission on Ethics has jurisdiction over this complaint.

B. REPORT OF INVESTIGATIVE ACTIVITIES:

- Reviewed Requests for Opinion (complaints) 06-61, 06-62, 06-66, 06-68, submitted in September 2006 by Jeannie Adams, Janae Maher, Mary Odom, and Shirley Bertschinger, respectively, including the following documents (TAB B):
 - Reports of campaign contributions purportedly from 1999 and 2006;
 - An article from the *Sparks Tribune Daily* newspaper published August 24, 2006, regarding the August 23, 2006 special meeting of the Sparks City Council;
 - A letter, dated September 5, 2006, from Ms. Bertschinger to Sparks City Attorney Chester Adams
- Reviewed *Waivers of Statutory Time Requirement* submitted in September 2006 and response submitted in October 2006, by Michael Carrigan, including the following documents (TAB C):
 - A memorandum, dated August 17, 2006, from Senior Assistant City Attorney David Creekman, to the city mayor, city manager and city council members regarding bias or predisposition as grounds for disqualification of elected official;
 - AGO 98-27 (as referenced within the memorandum from the city attorney)
 - An e-mail, dated August 23, 2006, from Senior Assistant City Attorney David Creekman to city council members

- Reviewed response submitted March 13, 2007 by Michael Carrigan, regarding the March 9, 2007 *Notice of Additional Issues and Facts* sent to him by the Executive Director of the Commission on Ethics. Mr. Carrigan's response includes a memorandum dated March 12, 2007 from City of Sparks Senior Assistant Attorney David Creekman re: Pecuniary interest as a basis for the disqualification of an elected official (TAB D)
- Reviewed the City of Sparks August 23, 2006 special city council meeting agenda and minutes (excerpted agenda & minutes – TAB E)
- Reviewed 2003, 2005 and 2006 Campaign Contributions and Expenses Reports filed by Mr. Carrigan with the Sparks City Clerk (excerpted – TAB F)
- Reviewed related newspaper articles published in the *Reno Gazette-Journal* and the *Sparks Tribune* (TAB G)
- Reviewed related Commission on Ethics Opinions (TAB H)

C. RECOMMENDATIONS:

Based on the results of investigation, it is recommended that the Panel find that just and sufficient cause **DOES NOT EXIST** for the Commission to hold a hearing and render an opinion in this matter relating to the provisions NRS 281.481(2).

SPECIFIC REASON:

There is credible evidence that amounts to or supports a potential violation of NRS 281.481(2) by Mr. Carrigan.

Based on the results of investigation, it is recommended that the Panel find that just and sufficient cause **DOES EXIST** for the Commission to hold a hearing and render an opinion in this matter relating to the provisions of:

- NRS 281.481 (1)
- NRS 281.501 (2)
- NRS 281.501 (4)

SPECIFIC REASON:

Sufficient credible evidence exists to support a finding of just and sufficient cause for the Commission to hear the matter and render an opinion on whether the subject of the complaint violated the provisions of NRS 281.481(1), NRS 281.501(2) and NRS 281.501(4).

D. SUMMARY OF REQUEST FOR OPINION (COMPLAINT):

The complaints, submitted by Jeannie Adams, Janae Maher, Mary Odom, and Shirley Bertschinger allege a violation of NRS 281.481(1) by Councilman Carrigan. The complaints are virtually the same. The following is the substance of each of them:

During the Sparks special city council meeting held on August 23, 2006, Red Hawk Land Company sought approval from the city council to develop a site, within the planned unit development of Tierra de Sol, to allow for a resort offering entertainment, dining, non-restricted gaming, commercial, a 200 room hotel and a public facility. This proposed resort and casino is known as the “Lazy 8 Ranch.”

At that meeting, Mr. Carrigan disclosed that Mr. Carlos Vasquez, a public relations consultant and spokesperson for Red Hawk Land Company, is Mr. Carrigan’s personal friend and re-election campaign manager.

This friendship between Mr. Vasquez and Mr. Carrigan gives an undue influence over Mr. Carrigan’s vote to approve the Lazy 8 project.

Furthermore, Mr. Carrigan owes Carlos Vasquez for economic gains. In 1999, Mr. Carrigan reported a total of \$15,000.00 in campaign contributions received from Mr. Vasquez and Art Associates, an advertising and consulting business owned by Mr. Vasquez. In 2006, Mr. Carrigan reported only \$825.00 of “in kind” campaign contributions received from Mr. Vasquez for “graphic artist computer production.” However, advice Mr. Carrigan received from Mr. Vasquez as campaign manager, that runs an average of \$4,000.00, was not reported. Mr. Carrigan is financially indebted to Mr. Vasquez for economic gains; therefore, Mr. Vasquez has an even greater undue influence over Mr. Carrigan’s vote for the Lazy 8 project.

E. SUMMARY OF SUBJECT’S RESPONSE:

Mr. Carrigan submitted a *Waiver of Statutory Time Requirement* and a response. The following is the substance of his response:

In early August 2006, Mr. Carrigan asked for a legal opinion from the Sparks city attorney’s office on the issue of Mr. Carrigan’s personal and professional relationship with Mr. Vasquez. On August 17, 2006, the city attorney’s office supplied the mayor, city manager and city council members with a memorandum regarding this matter. The memorandum made it clear that Mr. Carrigan was not conflicted.

Mr. Carrigan’s understanding of the August 17 memorandum is that, if the personal relationships in which he is involved may give rise to allegations of bias against him, he should err on the side of caution and disclose the relationship before voting on the issue.

On the day of the August 23 special city council meeting, an e-mail was sent to the city council members, from Assistant City Attorney David Creekman, reminding each of the council members of the possible conflict of interest disclosure requirements. In accordance with the e-mail, Mr. Carrigan disclosed, at the meeting, that he had a personal and professional relationship with Mr. Vasquez. He said that he did not stand to reap financial or other personal gain as a result of any action he would take. He further stated that the personal interest he had would not cloud his judgment.

Mr. Carrigan has voted on many issues brought before the city council involving friends and members of the community who are known to him. Sparks is a small community, but he does not feel that his judgment was clouded because of these relationships at any point in time.

During a telephone interview, Mr. Carrigan told me that he listed the consulting services that he received from Mr. Vasquez on his final 2006 in-kind campaign contributions report in the amount of \$9,000.00.

F. RELEVANT STATUTES:

NRS 281.481 General requirements; exceptions. A code of ethical standards is hereby established to govern the conduct of public officers and employees:

1. A public officer or employee shall not seek or accept any gift, service, favor, employment, engagement, emolument or economic opportunity which would tend improperly to influence a reasonable person in his position to depart from the faithful and impartial discharge of his public duties.

2. A public officer or employee shall not use his position in government to secure or grant unwarranted privileges, preferences, exemptions or advantages for himself, any business entity in which he has a significant pecuniary interest, or any person to whom he has a commitment in a private capacity to the interests of that person. As used in this subsection:

(a) "Commitment in a private capacity to the interests of that person" has the meaning ascribed to "commitment in a private capacity to the interests of others" in subsection 8 of NRS 281.501.¹

(b) "Unwarranted" means without justification or adequate reason.

* * * * *

¹**NRS 281.501(8):** As used in this section, "commitment in a private capacity to the interests of others" means a commitment to a person:

- (a) Who is a member of his household;
- (b) Who is related to him by blood, adoption or marriage within the third degree of consanguinity or affinity;
- (c) Who employs him or a member of his household;
- (d) With whom he has a substantial and continuing business relationship; or
- (e) Any other commitment or relationship that is substantially similar to a commitment or relationship described in this subsection.

NRS 281.501 Additional standards: Voting by public officers; disclosures required of public officers and employees; effect of abstention from voting on quorum; Legislators authorized to file written disclosure.

* * * * *

2. Except as otherwise provided in subsection 3, in addition to the requirements of the code of ethical standards, a public officer shall not vote upon or advocate the passage or failure of, but may otherwise participate in the consideration of, a matter with respect to which the independence of judgment of a reasonable person in his situation would be materially affected by:

- (a) His acceptance of a gift or loan;
- (b) His pecuniary interest; or
- (c) His commitment in a private capacity to the interests of others.²

↪ It must be presumed that the independence of judgment of a reasonable person would not be materially affected by his pecuniary interest or his commitment in a private capacity to the interests of others where the resulting benefit or detriment accruing to him or to the other persons whose interests to which the member is committed in a private capacity is not greater than that accruing to any other member of the general business, profession, occupation or group. The presumption set forth in this subsection does not affect the applicability of the requirements set forth in subsection 4 relating to the disclosure of the pecuniary interest or commitment in a private capacity to the interests of others.

* * * * *

4. A public officer or employee shall not approve, disapprove, vote, abstain from voting or otherwise act upon any matter:

- (a) Regarding which he has accepted a gift or loan;
- (b) Which would reasonably be affected by his commitment in a private capacity to the interest of others; or
- (c) In which he has a pecuniary interest,

↪ without disclosing sufficient information concerning the gift, loan, commitment or interest to inform the public of the potential effect of the action or abstention upon the person who provided the gift or loan, upon the person to whom he has a commitment, or upon his interest. Except as otherwise provided in subsection 6, such a disclosure must be made at the time the matter is considered. If the officer or employee is a member of a body which makes decisions, he shall make the disclosure in public to the Chairman and other members of the body. If the officer or employee is not a member of such a body and holds an appointive office, he shall make the disclosure to the supervisory head of his organization or, if he holds an elective office, to the general public in the area from which he is elected. This subsection does not require a public officer to disclose any campaign contributions that the public officer reported pursuant to NRS 294A.120 or 294A.125 in a timely manner.

* * * * *

²**NRS 281.501(8):** As used in this section, “commitment in a private capacity to the interests of others” means a commitment to a person:

- (a) Who is a member of his household;
- (b) Who is related to him by blood, adoption or marriage within the third degree of consanguinity or affinity;
- (c) Who employs him or a member of his household;
- (d) With whom he has a substantial and continuing business relationship; or
- (e) Any other commitment or relationship that is substantially similar to a commitment or relationship described in this subsection.

G. RESULTS OF INVESTIGATION:

The proposed development of a resort hotel and casino, known as the Lazy 8 Ranch, was scheduled to be heard at the August 23, 2006, City of Sparks special city council meeting. The developer, Red Hawk Land Company, was seeking approval from the city council to allow for the development of the resort. The ultimate action taken by the council was approval of a motion, by a vote of 3 to 2, to deny the project. Mr. Carrigan was one of the dissenting votes.

The developer hired Carlos Vasquez to act as a public relations consultant and spokesperson on behalf of the developer. Mr. Vasquez represented the developer at the August 23, 2006, special city council meeting.

Mr. Vasquez is a longtime personal friend of Mr. Carrigan. Mr. Carrigan's final 2006 in-kind campaign contributions report shows ten entries for "consulting services" received from Mr. Vasquez (Art Assoc, Reno, NV), for various dates from August through November, totaling \$9,000.00.

A memorandum, dated August 17, 2006 was sent from Senior Assistant City Attorney David Creekman to the city mayor, city manager and city council members regarding bias or predisposition as grounds for disqualification of elected official. The memorandum states, in part:

"We have looked into the question of whether predisposition or demonstrable bias are grounds for the recusal of an elected official when that elected official is charged with responsibility for later deciding, in an official capacity, an issue relating to the subject matter where bias is alleged to exist. **Because we are unaware of any facts establishing the existence of financial or personal gain or loss**¹ (Other than the possibility of simple personal connections and friendships which formed the basis for an Opinion of the Nevada Attorney General, 98-27, issued on September 26, 1998, on this subject. That opinion concluded that abstention is only required where there exists objective evidence that a reasonable person in the public official's situation would have his or her independence of judgment materially affected by a commitment in a private capacity to the tangible interests of others.), **it is our legal conclusion that previously-revealed positions which may indicate a predisposition on a matter before the City Council do not require the recusal of an elected member of the City Council.**" (Emphasis added)

An e-mail was sent on August 23, 2006, from Senior Assistant City Attorney David Creekman to city council members, reminding each member of the possible conflict of interest disclosure requirements. The e-mail states, in part:

"I write to remind each of you, in accord with the legal opinion previously provided to you, to be certain to disclose any possible financial or personal interest you might arguably have with respect to the project (or the individuals involved in the project) you will be hearing tonight. Once that disclosure has

been made, you need to conclude that the possible financial or personal interest will, or will not (as the case may be) cloud your judgment with respect to the issue before you. If you believe that your judgment will be impaired as a result of any financial or personal interest you might disclose, you should recuse yourself from the proceedings and from taking any action tonight.

In the legal opinion of the City Attorney's Office, the relationships, financial and personal, which have previously been disclosed, and about which the City Attorney's Office is aware, are not of such a nature as to require the recusal of any of you. The important thing here, however, is that you each make a full disclosure, on the record, of the any (sic) financial or personal interest and then draw a conclusion as to the effect of that interest."

During a telephone interview on March 1, 2007, Senior Assistant City Attorney Creekman told me that he had no personal knowledge of the actual relationship between Mr. Carrigan and Mr. Vasquez. He further stated that each council member had to make his or her own determination as to recusal from the proceedings.

H. SUMMARY OF SUBJECT'S RESPONSE TO ADDITIONAL ISSUES AND FACTS:

Additional issues and facts were discovered during the course of the complaint investigation that appeared to relate to the provisions of NRS 281.481(2) and NRS 281.501(2) and NRS 281.501(4). Specifically, Mr. Carrigan's campaign and expense reports, filed for the years 2003 through 2006, indicate substantial contributions received from and payments made to "Art Associates, Reno, NV." In 2003, Mr. Carrigan received \$3,980.00 of "in kind" campaign contributions in the form of consulting/advertising services. In 2004, he paid \$2,500.00 for expenses related to polling. (The City of Sparks office of the City Clerk has no report for campaign contributions and expenses on file for 2005.) In 2006, Mr. Carrigan received in kind contributions of \$825 in the form of graphic art services, consulting services valued at \$9,000.00, and he paid \$46,562.00 for expenses related to advertising to Art Associates, a company owned by Mr. Vasquez. Through Art Associates, Mr. Vasquez gave nearly 20 percent of total campaign contributions and was paid for services representing approximately 89 percent of the total campaign budget for 2006. The following table summarizes those transactions:

Summary Table Of Contributions & Expenses Reports

YEAR	CONTRIBUTIONS				EXPENSES			
	MONETARY		IN KIND		MONETARY		IN KIND	
	Art Associates	All Others	Art Associates	All Others	Art Associates	All Others	Art Associates	All Others
2003	0	\$25,185	\$ 3,980	\$4,281	0	\$ 9,645	0	0
2004	0	0	0	0	\$ 2,500	0	0	0
2006	0	\$49,400	\$ 9,825	0	\$46,562	\$ 5,774	0	0

Pursuant to NAC 281.189, the Executive Director of the Commission on Ethics sent a letter, on March 9, 2007, notifying Mr. Carrigan of the additional relevant issues and facts related to the 2003 through 2006 campaign and expense reports.

On March 13, 2007, Mr. Carrigan submitted a response to the notice of additional issues and facts. Included with his response was a memorandum of confidential legal opinion dated March 12, 2007. The memo was addressed to Mr. Carrigan from City of Sparks Senior Assistant Attorney David Creekman. The subject was pecuniary interest as a basis for the disqualification of an elected official. The following is a summary of Mr. Carrigan's response to the notice:

Mr. Carrigan's friendship with Mr. Vasquez is substantial and continuing, but their business relationship is neither "substantial" nor "continuing." The only business relationship Mr. Carrigan has with Mr. Vasquez occurs only once every four years, during the course of an election campaign, and only lasts from two to four months. Mr. Carrigan's decision not to abstain from voting on the matter relating to the Red Hawk Land Company was based on his firm belief that his independence of judgment was in no way impacted by his relationship with Mr. Vasquez, personal or otherwise.

The primary motivation for Mr. Carrigan's decision was, and always is, his view of what is in the best interest of the residents of the City of Sparks. In making such a decision, he carefully analyzes a number of factors. In the Red Hawk matter, those factors included, among others, traffic concerns, the net impact of the proposal on the city's revenue flows, the net impact of the proposal on services, the city's need to honor its pre-existing contractual obligations and the benefit to the city's residents of the type of services and facilities proposed to be developed in the Red Hawk Land Company's planned development.

Mr. Carrigan states that the City of Sparks Senior Assistant Attorney's opinion concludes that, under published opinions from the Commission on Ethics, Mr. Carrigan committed no ethical violations with regard to the Red Hawk Land Company matter.

The memorandum of confidential legal opinion from City of Sparks Senior Assistant Attorney David Creekman, states that his opinion is based upon what Mr. Creekman understands to be the following facts regarding this matter:

The August 17, 2006 opinion from Mr. Creekman did not consider the question of whether an elected official's financial or personal gain or loss should serve as a basis for disqualification of the elected official from a vote. No facts were divulged which revealed the possible existence of pecuniary interests at issue and present at that time. These facts have now prompted this second legal opinion from the Office of the Sparks City Attorney.

Mr. Carrigan's long-term personal acquaintance, which evolved into a friendship between Mr. Vasquez and himself, began between each of their spouses who worked together in approximately 1991. Since that time, the spouses' friendships expanded to include the Carrigan and Vasquez families.

Mr. Vasquez volunteered to assist Mr. Carrigan with his re-election campaign. He provided general campaign management services, including political advice, artistic design and advertising services. Mr. Vasquez was reimbursed for his costs, approximately \$42,386.00. He considered his political advice and artistic design services as a campaign donation in the approximate value of \$9,825.00. This information has been publicly disclosed in Mr. Carrigan's campaign disclosure filings as required by law.

In his memorandum, Mr. Creekman gives his analysis of various Commission on Ethics opinions relative to the applicable law, NRS 281.481(1) and (2), and NRS 281.501(2) and (4), concluding that Mr. Carrigan did not commit any violations.

I. CONCLUSION:

Allegations regarding NRS 281.481(1):

In its Opinion No. 00-54, the Nevada Commission on Ethics opined the intent of NRS 281.481(1). The commission stated, in part:

"The intent of NRS 281.481, Subsection 1, is to prohibit a public officer or employee from violating the public trust by taking official action in exchange for a personal benefit (i.e., a "quid pro quo"), thereby departing from the faithful and impartial discharge of public duties. The Commission's analysis in this matter involves a two-pronged factual determination: (1) whether . . . [the public officer] . . . sought or accepted a gift or service or favor or employment or engagement or emolument or economic opportunity, and (2) whether the gift or service or favor or employment or engagement or emolument or economic opportunity would tend improperly to influence a reasonable person in . . . [his] . . . position to depart from the faithful and impartial discharge of . . . [his] . . . public duties . . ."

The complainants allege that Mr. Carrigan is financially indebted to Mr. Vasquez for the gratuitous campaign consulting services performed by Mr. Vasquez. The complainants also allege that this resulted in there being undue influence over Mr. Carrigan's vote for the Lazy 8 project at the August 23, 2006 special city council meeting.

The complainants further allege that the value of the advice, from Mr. Vasquez acting as a campaign manager, should have been reported. Mr. Carrigan listed an in-kind campaign contribution received from Mr. Vasquez for graphic artist computer production in the amount of \$825.00. The evidence in this matter also reveals that Mr. Carrigan listed consulting services, in

the amount of \$9,000, as having been received from Mr. Vasquez during the 2006 campaign, on his final in-kind campaign contributions report.

The value of the consulting services, within the context of the overall campaign contributions, raises the issue of whether such services or economic opportunity would tend improperly to influence a reasonable person in the public officer's position to depart from the faithful and impartial discharge of his public duties. In NCOE Opinion No. 95-51, the commission states ". . . it is conceivable that a campaign contribution could be deemed to improperly influence a reasonable man depending upon the amount of the contribution, the identity of the donor, the timing of the gift, and other such factors."

Contrary to the complaint allegation, the value of the consulting services was reported. However, in this case, the value of the consulting services rendered by Mr. Vasquez is nearly 20 percent of Mr. Carrigan's total campaign costs. Furthermore, Mr. Vasquez is a longtime personal friend of Mr. Carrigan, and the in-kind contribution was given at or about the time that the city council deliberated regarding the development represented by Mr. Vasquez. The combination of these factors could improperly influence a reasonable person in the public officer's position to depart from the faithful and impartial discharge of his public duties.

Allegations regarding NRS 281.481(2):

In 2006, Mr. Carrigan reported \$46,562.00 paid to the company owned by Mr. Vasquez for expenses related to advertising, representing approximately 89 percent of Mr. Carrigan's total campaign budget. Coupled with the continuing nature of the business relationship from previous campaign years, the substantial business relationship during the 2006 re-election campaign would appear to indicate that Mr. Carrigan had a significant pecuniary interest, or a commitment in a private capacity to Mr. Vasquez. Nonetheless, it does not appear that Mr. Carrigan used his public position to obtain an unwarranted benefit for Mr. Vasquez.

Allegations regarding NRS 281.501(2):

A public officer is prohibited from voting upon or advocating the passage or failure of a matter where the independence of judgment of a reasonable person in his situation would be materially affected by his pecuniary interest or commitment in a private capacity to the interests of others. It appears that Mr. Carrigan and Mr. Vasquez may have had a substantial and continuing business relationship that would have required Mr. Carrigan to abstain from voting on the matter involving the development represented by Mr. Vasquez.

Allegations regarding NRS 281.501(4):

A public officer is prohibited from taking action until that public officer has disclosed sufficient information concerning a commitment or interest, in order to inform the public of the potential effect of the action or abstention upon the person to whom the public officer has a commitment, or a pecuniary interest. The disclosure must be made at the time the matter is considered, in public, to the Chairman and other members of the body. NRS 281.501(4) also states, in part:

“This subsection does not require a public officer to disclose any campaign contributions that the public officer reported pursuant to NRS294A.120 or 294.125 in a timely manner.”

Mr. Carrigan’s Campaign Contribution and Expense Reports appear to properly include the contributions he received. The reports also appear to have been timely filed with the Sparks City Clerk. The reports contain information indicating that the campaign expenses paid to the company owned by Mr. Vasquez are approximately 89 percent of Mr. Carrigan’s total 2006 campaign budget. Although the law does not require disclosure of campaign contributions reported in a timely manner, the law is silent regarding disclosure of campaign expenses. The disclosure made by Mr. Carrigan at the August 23, 2006 city council meeting may not have contained enough sufficient information to indicate how substantial the business relationship between Mr. Carrigan and Mr. Vasquez was at that time.

The Executive Director finds that there is no credible evidence to substantiate a potential violation of NRS 281.481(2) by Mr. Carrigan. Accordingly, it is recommended that the Panel find just and sufficient cause **DOES NOT EXIST** for the Commission to hold a hearing and render an opinion regarding whether Mr. Carrigan violated NRS 281.481(2).

The Executive Director finds that there is credible evidence to substantiate potential violations of NRS 281.481(1), NRS 481.501(2) and NRS 281.501(4). Accordingly, the Executive Director recommends that the panel find just and sufficient cause **DOES EXIST** for the Commission to hold a hearing and render an opinion regarding whether Mr. Carrigan violated the provisions of NRS 281.481(1), NRS 481.501(2) and NRS 281.501(4).

Prepared by: Matt C. DiOrio DATED: April 25, 2007
MATT C. DI ORIO
SENIOR INVESTIGATOR

Approved by: L. Patrick Hearn DATED: April 25, 2007
L. PATRICK HEARN
EXECUTIVE DIRECTOR